

**BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON**

KENNETH COLE ET AL,)	
Appellants,)	CASE NO. R-ALLO-09-022
vs.)	
DEPARTMENT OF LICENSING,)	ORDER OF THE BOARD
Respondent.)	FOLLOWING HEARING ON
)	EXCEPTIONS TO THE
)	DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member, for a hearing on Appellants' exceptions to the director's determinations dated June 22, 2009. The hearing was held at the office of the Personnel Resources Board in Olympia, Washington, on January 20, 2010.

Appearances. Appellants were represented by Natalie Kaminski, Union Representative for the International Federation of Professional and Technical Engineers, Local 17. Shelby Krismer-Harada, Classification and Compensation Specialist, represented Respondent Department of Licensing (DOL) .

Background. Appellants are employed by DOL in the Auditor 5 classification with a working title of Prorate & Fuel Tax Field Auditor. On November 16, 2007, Appellants submitted a group Position Review Request to DOL's human resource office. Appellants asked that their positions be reallocated to the Revenue Auditor 3 classification.

Respondent compared the duties described in Appellants' review request to the Department of Personnel Classification Specifications for Auditor 5 and Revenue Auditor 3. By letter dated February 11, 2008, Respondent notified Appellants that the duties and responsibilities they performed were properly allocated to the Auditor 5 class.

1 On March 5, 2008, Appellants requested a director's review of DOL's decision. By letter dated
2 June 22, 2009, the director's designee notified Appellants that their positions were properly
3 allocated to the Auditor 5 class.

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5 On July 15, 2009, Appellants filed exceptions to the director's determinations. Appellants'
6 exceptions are the subject of this proceeding.

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8 Appellants' positions are assigned to the Audit Section of Prorate and Fuel Tax Services within the
9 Department of Licensing. The primary focus of their positions involves conducting highly complex
10 tax and licensing audits and investigations of Washington-based and out-of-state businesses
11 including major oil companies and interstate motor carriers. Appellants plan, coordinate, and
12 conduct audits and investigations for diverse accounts for motor fuel tax, special fuel tax, aircraft
13 fuel tax, and interstate motor carriers to ensure proper payment of fuel taxes and
14 licensing/registration fees under IFTA and IRP provisions.

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16 **Summary of Appellants' Arguments.** Prior to July 1, 2007, the Revenue Auditor classification
17 series was an agency specific series that was used by the Department of Revenue. As a result of
18 civil service reform, the series became available for use by all state agencies. Likewise, before civil
19 service reform, the Excise Tax Examiner series was a Department of Revenue agency specific
20 series. Subsequent to civil service reform the Excise Tax Examiner series became available for use
21 by all state agencies and Respondent reallocated some of their Auditor 2 and 3 positions to the
22 Excise Tax Examiner series.

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24 During the hearing before the Board, Appellants argued that because DOL reallocated some auditor
25 positions to the Excise Tax Examiner series, their position should also be reallocated. Appellants
26 assert that Respondent should use a similar process and apply the same standards to reallocate their
27 positions to the Revenue Auditor 3 class. Appellants contend that their work is the same as the
28 work performed by positions allocated to the Revenue Auditor 3 classification within the
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1 Department of Revenue and that they perform the typical work described in the Revenue Auditor 3
2 class specification.

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4 In their exception appeal, Appellants assert that the director's designee did not consider the full
5 extent of the information they presented during the director's review process. Appellants also assert
6 that DOL inaccurately described the scope of work they performed. Appellants argue that the
7 information they provided supports reallocation of their positions and contend that the scope of
8 their work fits within the Revenue Auditor 3 classification.

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10 **Summary of Respondent's Arguments.** Respondent argues that DOL's allocation determination
11 was based on a comparison of the duties and responsibilities of Appellants' positions, as described
12 by Appellants, to the Department of Personnel Classification Specifications. Respondent asserts
13 that both the agency and the director's designee consider all the information provided during the
14 review process. Respondent asserts that the information shows that Appellants do not perform the
15 broad range of activities and diversity of audits encompassed by the Revenue Auditor
16 classifications. Respondent describes the Auditor 5 positions as performing a piece of the audit pie
17 while Revenue Auditors perform the entire pie. In addition, Respondent argues that Appellants'
18 duties and responsibilities are specifically encompassed in the class series concept and definition of
19 the Auditor 5 classification. Respondent asserts that Appellants' positions are properly allocated to
20 the Auditor 5 classification.

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22 **Primary Issue.** Whether the director's determination that Appellants' positions are properly
23 allocated to the Auditor 5 classification should be affirmed.

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25 **Relevant Classifications.** Auditor 5, class code 152L, and Revenue Auditor 3, class code 479N.

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27 **Decision of the Board.** The purpose of a position review is to determine which classification best
28 describes the overall duties and responsibilities of a position. A position review is neither a
29 measurement of the volume of work performed, nor an evaluation of the expertise with which

1 that work is performed. A position review is a comparison of the duties and responsibilities of a
2 particular position to the available classification specifications. This review results in a
3 determination of the class that best describes the overall duties and responsibilities of the
4 position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

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6 WAC 357-13-050 requires employers to allocate positions to established classes in the
7 Department of Personnel class plan. It is the employer's responsibility to reallocate positions as
8 appropriate when existing classes are revised or when new classes become available. However,
9 the reallocation of positions within an agency does not form a basis or create a criterion for
10 reallocating other positions.

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12 In addition, examples of work statements or typical work statements found in classification
13 specifications are not allocating criteria. Rather they provide guidance on the level of work
14 typically found in the various classes within the series. The following standards, in descending
15 order, are the primary considerations in allocating positions:

- 16 • Class series concept (if one exists).
- 17 • Definition or basic function of the class.
- 18 • Distinguishing characteristics of a class.
- 19 • Class series concept, definition/basic function, and distinguishing characteristics of other
20 classes in the series in question.

21 Class series concept for the Revenue Auditor classes states:

22 This series is responsible for administering business and occupation taxes, sales
23 and use tax, and public utility tax, deductions, exemptions, deferrals and credits.
24 These positions conduct audits of businesses in diverse industry groups, including
25 corporate, governmental and nonprofit organizations. A wide variety of financial
26 and nonfinancial records are examined to verify that the business has reported its
27 tax liabilities correctly in compliance with the technical requirements imposed by
28 the Revised code of Washington (RCW), the Washington Administrative Code
29 (WAC), Washington Tax Decisions (WTD), Interim Audit Guidelines (IAG), and
Excise Tax Advisories (ETA) as administered by the Washington State
Department of Revenue.

Audits are conducted in accordance with laws, regulations and applicable
professional standards. These positions require the skills to deal with delicate

1 issues, such as the examination of confidential records that may result in the
2 assessment of tax; and the organizational skills to manage numerous ongoing
3 audits while administering a wide variety of excise tax laws and rules.

4 Appellants' position do not perform the scope or breadth of duties described in the Revenue
5 Auditor class series concept. Rather, their duties and responsibilities are limited to conducting
6 audits and investigations for motor fuel tax, special fuel tax, aircraft fuel tax, and interstate motor
7 carriers and determining whether the correct payment of taxes and licensing/registration fees have
8 been made. Appellants' positions do not fit within the class series concept of the Revenue Auditor
9 classification therefore, allocation to this series is not appropriate.

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11 Class series concept for the Auditor classes states:

12 Positions in this series conduct fiscal, performance or program audits to determine
13 compliance with applicable laws, regulations, and standards utilizing Generally
14 Accepted Auditing Standards and Generally Accepted Government Accounting
15 Principles. This work can be conducted on or off site and includes the review and
16 analysis of source documents to determine compliance with appropriate auditing
17 standards by validating financial liabilities, payments, assets, fiscal, record or
18 accounting systems. Positions prepare and recommend improved fiscal
19 compliance and control procedures.

20 Appellants conduct fiscal audits and review and analyze source documents to determine
21 compliance with the International Fuel Tax Agreement (IFTA) and the International Registration
22 Plan (IRP). They validate financial liabilities and they prepare and recommend improved fiscal
23 compliance and control procedures. Appellants' positions fit within the class series concept for
24 the Auditor classes.

25 In Mikitik v. Dept's of Wildlife and Personnel, PAB No. A88-021 (1989), the Personnel Appeals
26 Board concluded that when there is a class that specifically includes a particular assignment and
27 there is a general classification that has a definition which could also apply to the position, the
28 position should be allocated to the class that specifically includes the position. In this case,
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1 Appellants' positions are specifically included in the definition of the Auditor 5 classification
2 which states:

3 This is the senior, specialist, or lead worker level of the series. Positions function
4 as senior auditor, trainer, lead worker, or auditor in charge. Conducts audits of
5 individual proprietors, businesses and governmental agencies including the largest
6 and most complex accounts for fuel tax, sale tax, and businesses operating under
7 the International Fuel Tax Agreement (IFTA) and the International Registration
8 Plan (IRP); or plans, organizes, and directs the ferry's system internal control and
9 services programs; or leads surety analysts conducting financial analysis to
10 determine the financial stability and loss development to determine the claims
11 liability and surety requirements of self-insured employers. Positions may lead or
12 supervise lower level staff.

13 (Emphasis added.)

14 In a hearing on exceptions, the appellant has the burden of proof. WAC 357-52-110. To meet their
15 burden of proof, Appellants must establish that a majority of their assigned duties and
16 responsibilities fit within the classification to which they wish to be reallocated. Appellants have
17 failed to meet their burden of proof.

18 ORDER

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Kenneth Cole,
20 et al. is denied, and the director's determination dated June 22, 2009, is affirmed.

21 DATED this ____ day of _____, 2010.

22 WASHINGTON PERSONNEL RESOURCES BOARD

23 _____
24 LAURA ANDERSON, Vice Chair

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26 DJ MARK, Member